

STATEMENT OF PURPOSE

RS20154

This bill is intended to cure a potential problem for Idaho trusts which are required to comply with Rev. Rul. 2008–22, Substitution power. This ruling provides guidance regarding whether the corpus of an inter vivos trust is includable in the grantor’s gross estate under section 2036 or 2038 of the Internal Revenue Code if the grantor retained the power, exercisable in a non-fiduciary capacity, to acquire property held in the trust by substituting other property of equivalent value. The ruling provides that, for estate tax purposes, the substitution power will not, by itself, cause the value of the trust corpus to be includable in the grantor’s gross estate, if the trustee has a fiduciary obligation (under local law) to ensure the grantor’s compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are in fact of equivalent value and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

A purpose of many of such trusts is to avoid inclusion in the grantor’s gross estate. No current Idaho local law exists creating the fiduciary obligation required by the ruling. Therefore, this bill adds a new section 68-106A to create that fiduciary obligation.

FISCAL NOTE

This bill will have no negative fiscal impact.

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